FILED
LODGED
RECEIVED
MAIL

JAN 18 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

1Simple Chiropractic Family Healthcare PLLC
10808 192nd St. Ct.E
Graham, WA 98338
Petitioner, *Pro Se*

FILED
LODGED
RECEIVED
MAIL

JAN 25 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY

SEA 39213 No Iss.

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE

C11-0144 MJP

SIMPLE CHIROPRACTIC FAMILY HEALTHCARE PLLC, Petitioner, v. **UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, and ERIC NIX, REVENUE AGENT ,** Respondents.	**CASE NO.** **PETITION TO QUASH IRS THIRD PARTY SUMMONS**

COMES NOW Simple Chiropractic Family Healthcare PLLC, Petitioner, *pro se*, and petitions this Court to quash an Internal Revenue Service Third Party Administrative Summons.

JURISDICTION

1. This Court has jurisdiction pursuant to Title 26 U.S.C. § 7609 and Title 5

11-CV-00144-PET

U.S.C. § 552(a). [1]

2. Venue is proper, because the custodian of records and records sought (the subject of this controversy) by the summonses to Bank of America is within the United States District Court for the Western District of Washington, Seattle. Three additional Summons were issued to (1) Key Bank within the United States District Court for the District of Ohio, Northern District, Cleveland, (2) Bank of America within the United States District Court for the District of Washington, Western District, Seattle, a related summons with the target as Jeanne E. Munson, and (3) Bank of America/County Wide Home Loans, Inc. d/b/a America's Wholesale Lender within the District of Arizona, Phoenix. [2] Petitioner contends that judicial economy and the convenience of the parties dictates that these summonses should be heard together. Petitioner will seek counsel to consider whether a motion should be made to change the venue of the Ohio and Arizona proceedings to The Western District of Washington where Petitioner, Simple Chiropractic Family Healthcare PLLC, and the majority of the Parties are all located. [3] This is the venue where all records are to be produced.

[1] All further references to Code Sections are to Title 26 unless otherwise noted.

[2] 28 U.S.C. Section 7609(h) states – "The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g)." Thus, the Motion to Quash the IRS Summons in the four other cases have been filed in their respective Districts and States. However, see footnote 3, below.

[3] Section 7402(b)'s language (shared with Section 7604(a) and 7609(h)) -- "the district court of the United States for the district in which such person resides or may be found" -- is not a grant of subject matter jurisdiction but "is in the nature of a venue provision." *United States v. Hankins*, 581 F.2d 431, 439 n.11 (5th Cir. 1978) ("Montgomery characterizes this statute as a grant of subject matter jurisdiction, but we think this assertion incorrect.").

PARTIES

3. The Petitioner in this action is Simple Chiropractic Family Healthcare PLLC, whose address is 110808 192nd St. Ct. E Graham, WA 98338. Petitioner is named as a target of the summons in the attachment thereto.

4. The Respondents in this action are the United States of America, the Internal Revenue Service (hereinafter "IRS") and Eric Nix, IRS Revenue Agent (Nix).

5. Nix is the IRS official that issued the alleged summonses which are the subject of this controversy. Nix's mailing address is 1202 Pacific Avenue, Suite 550 MS. W8O6EN, Tacoma, Washington 98402.

6. The Third Party from whom IRS seeks records is:

a) Bank of America whose mailing address is 800 5th Ave., MD:WA15011017, Seattle Washington 98104.

7. The third party summons was issued to Bank of America on January 3, 2011. (See Exhibit "A" the IRS summons issued to Bank of America, a true and correct copy attached hereto.) On or about 1January 27, 2010 Bank of America is scheduled to comply with the IRS summons, surrendering Simple Chiropractic Family Healthcare PLLC's records to the IRS.

CAUSES OF ACTION AGAINST RESPONDENTS

For the Causes of Action against the Respondents, and each of them, Simple Chiropractic Family Healthcare PLLC alleges as follows:

I. First Cause of Action Against Respondents

8. The Summonses, and each of them set forth herein above, are in violation of the statutory summons process and should be quashed because IRS failed to give Simple Chiropractic Family Healthcare PLLC timely notices required by 26 U.S.C., Section 7609(a)(1), *i.e*, 23 days notice prior to the date set to turn over the records requested.. As a consequence Simple Chiropractic Family Healthcare PLLC was not given the opportunity to timely file a Petition to Quash the Summons pursuant to Section 7609(b)(1).

II. Second Cause of Action Against Respondents

9. The IRS is in violation of the statutory summons process as they failed to provide Simple Chiropractic Family Healthcare PLLC advance notice that contact with any of these third parties were to be made; and, failed to periodically provide Simple Chiropractic Family Healthcare PLLC with a record of persons contacted by IRS about Simple Chiropractic Family Healthcare PLLC as required by Section 7602(c)(1)&(2).

III. Third Cause of Action Against Respondents

10. Simple Chiropractic Family Healthcare PLLC alleges upon information and belief that the Summonses, and each of them, were issued while a referral for criminal prosecution to the Department of Justice is pending, which was made by the IRS in violation of Section7602(d)(2)(A).

IV. Fourth Cause of Action Against Respondents

11. Because of the violations and abuses of the summonses process as alleged within paragraphs 8 through 11, and 14, inclusive, the IRS failed to meet the "GOOD FAITH" requirement of the *Powell* [4] standard.

V. Fifth Cause of Action Against Respondents

12. Respondents contrary to law have caused, or will cause, Simple Chiropractic Family Healthcare PLLC' records to be turned over to the Respondents in violation of the Privacy Laws of the United States of America.

VI. Sixth Cause of Action Against Respondents

14. In the attachment to the summons the IRS also targeted Simple Chiropractic Family Healthcare PLLC, 26-3088835 and Advanced Chiropractic Health and Wellness Center, Inc. P.S. The Summonses, and each of them set forth herein above, are in violation of the statutory summons process and should be quashed because IRS failed to give notices required by 26 U.S.C., Section 7609(a)(1) to Simple Chiropractic Family Healthcare PLLC, 26-3088835 and Advanced Chiropractic Health and Wellness Center, Inc. P.S. As a consequence Simple Chiropractic Family Healthcare PLLC was issued in bad faith and is an abuse of the summons process.

PRAYER FOR RELIEF

Wherefore, Simple Chiropractic Family Healthcare PLLC respectfully requests that this Court:

1. QUASH the third party administrative summonses of December 28, 2010, to Bank of America for the records pertaining to Simple Chiropractic Family Healthcare PLLC.

[4] *United States v. Powell*, 379 U.S. 48, 85 S.Ct. 248 (1964).

2. ORDER that the IRS turn over to Simple Chiropractic Family Healthcare PLLC a copy of any and all summonses and request for documents that were issued to third parties that were issued by IRS to any Third Parties to obtain records.

3. ORDER that the IRS turn over to Simple Chiropractic Family Healthcare PLLC any and all records that were or will be obtained, in its investigation of Simple Chiropractic Family Healthcare PLLC by any means that were not in full compliance with the summonsing provisions of the Internal Revenue Code Section 7602, et seq. and Section 7609, et seq.

4. ORDER Respondent to pay Simple Chiropractic Family Healthcare PLLC $1,000.00 for each violation of the State and Federal Privacy Laws.

5. Grant any and all other relief that the Court deems just and prudent, the foregoing considered.

Dated: JANUARY 13, 2011

Troy J. Munson, for
Simple Chiropractic Family Healthcare PLLC,
Pro Se Petitioner
10808 192nd St. Ct.E
Graham, WA 98338

CERTIFICATE OF SERVICE

I, Troy J. Munson, certify that pursuant to IRC §7609(b)(2)(B) true copies of the attached "**PETITION TO QUASH IRS THIRD PARTY SUMMONSES**" has been served, on this 14 th day of January, 2011, via Certified Mail to each of the following parties:

Cert. Mail # 7007 1490 0004 4886 1551
Internal Revenue Service, Eric Nix, Revenue Agent
1202 Pacific Avenue, Suite 550 MS. W8O6EN
Tacoma, Washington 98402

Cert. Mail # 7007 1490 0004 4886 1544
Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Washington, DC 20530-0001

Cert. Mail # 7007 1490 0004 4886 1537
Jenny A. Durkan
U.S. Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Tel: (206) 553-7970

Troy J. Munson

cc:
U.S. Courthouse
700 Stewart Street Suite 2310
Seattle, WA 98101

Summons

In the matter of the income tax liability of Troy J. Munson (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)

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Western Area Examination

Periods: Tax years ending December 31, 2004 through December 31, 2009

The Commissioner of Internal Revenue

To: Bank of America, Attn: Subpoena Dept.

At: 800 5th Ave, M/S: WA15011017, Seattle WA 98104

You are hereby summoned and required to appear before Eric Nix, Revenue Agent 1001362189 and/or his designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

To provide records as per attached summons rider.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

1201 Pacific Avenue, Suite 550 MS. W806EN, Tacoma WA 98402

Place and time for appearance at Mail to the address provided above

IRS

on the 27th day of January, 2011 (year) at 8:00 o'clock a m.

Issued under authority of the Internal Revenue Code this 3rd day of January, 2011 (year).

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2008)
Catalog Number 21405J

Signature of issuing officer

Revenue Agent #1001362189
Title

Signature of approving officer *(if applicable)*

Group Manager #1000278904
Title

Part C — to be given to noticee

"Exhibit A"